

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 461

BY SENATOR CLEMENTS AND RUCKER

[Originating in the Committee on Judiciary; reported
on January 31, 2023]

1 A BILL to amend and reenact §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, and §6C-2-6 of the Code of
2 West Virginia, 1931, as amended, all relating to the West Virginia Public Employees
3 Grievance Procedure; defining terms; clarifying actions by an agency taken during a
4 declared state of preparedness or emergency or any matter relating to protected classes
5 are not subject to grievances; providing that Division of Personnel may not be a party in
6 certain circumstances; requiring a notarized grievance form and providing for multiple
7 grievant parties; providing a grievance must be filed within the time limits specified or it
8 may be dismissed; extending certain time limits; providing for grievance dismissal for
9 untimeliness, lack of jurisdiction, or failure to state a claim and appeals of such dismissal;
10 updating default process to include employer; providing the grievance evaluator and the
11 administrative law judge may not hold a motion to dismiss in abeyance while other
12 proceedings take place; clarifying that grievances may be consolidated as long as the
13 initial grievance has not been dismissed; providing that proceedings may be rescheduled
14 for good cause shown; requiring grievant representatives provide the names and work
15 location of employees being represented; requiring that employees provide the name and
16 contact information of his or her representative; directing Grievance Board to make
17 available certain forms; providing that employee annual leave will be charged for work
18 hours used in preparing for and attending the grievance hearing in excess of certain limits;
19 providing for the chief administrator's resolution of certain disputes and further providing
20 for discretionary recording of conference; limiting annual number of grievances an
21 employee may serve as a representative; providing for conference recordings; requiring
22 grievance to be held in abeyance under certain circumstances; clarifying employee
23 representation is limited by work requirements; requiring grievant to provide copies of
24 grievance in certain cases; updating appellate procedure from level three decision; and
25 providing for award of costs and attorney fees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES' GRIEVANCE PROCEDURE.

§6C-2-1. Purpose.

1 (a) The purpose of this article is to provide a procedure for the resolution of employment
2 grievances raised by the public employees of the State of West Virginia, except as otherwise
3 excluded in this article.

4 (b) Resolving grievances in a fair, efficient, cost-effective, and consistent manner will
5 maintain good employee morale, enhance employee job performance, and better serve the
6 citizens of the State of West Virginia.

7 (c) Nothing in this article prohibits the informal disposition of grievances by stipulation or
8 settlement agreed to in writing by the parties, nor the exercise of any hearing right provided in
9 chapter 18 or 18A of this code. Parties to grievances shall ~~at all times~~ always act in good faith
10 and make every possible effort to resolve disputes at the lowest level of the grievance procedure.

11 ~~(d) Effective July 1, 2007, any reference in this code to the education grievance procedure,~~
12 ~~the state grievance procedure, article twenty-nine, chapter eighteen of this code or article six-a,~~
13 ~~chapter twenty-nine of this code, or any subsection thereof, shall be considered to refer to the~~
14 ~~appropriate grievance procedure pursuant to this article~~

§6C-2-2. Definitions.

1 For the purpose of this article and article three of this chapter:

2 (a) "Board" means the West Virginia Public Employees Grievance Board created in article
3 three of this chapter.

4 (b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor,
5 director, president, secretary or head of any state department, board, commission, agency, state
6 institution of higher education, commission or council, the state superintendent, the county
7 superintendent, the executive director of a regional educational service agency or the director of
8 a multicounty vocational center who is vested with the authority to resolve a grievance. A "chief

9 administrator" includes a designee, with the authority delegated by the chief administrator,
10 appointed to handle any aspect of the grievance procedure as established by this article.

11 (c) "Days" means working days exclusive of Saturday, Sunday, official holidays, and any
12 day in which the employee's workplace is legally closed under the authority of the chief
13 administrator due to weather or other ~~cause~~ causes provided for by statute, rule, policy or practice.

14 (d) "Discrimination" means any differences in the treatment of similarly situated employees
15 unless the differences are related to the actual job responsibilities of the employees or are agreed
16 to in writing by the employees.

17 (e)(1) "Employee" means any person hired for permanent employment by an employer for
18 a probationary full- or part-time position.

19 (2) A substitute education employee is considered an "employee" only on matters related
20 to days worked or when there is a violation, misapplication, or misinterpretation of a statute, policy,
21 rule, or written agreement relating to the substitute.

22 (3) "Employee" does not mean a member of the West Virginia State Police employed
23 pursuant to §15-2-1 *et seq.* of this code but does include civilian employees hired by the
24 superintendent of the State Police. "Employee" does not mean an employee of a Constitutional
25 officer unless he or she is covered under the civil service system, an employee of the Legislature,
26 or a patient or inmate employed by a state institution.

27 (f) "Employee organization" means an employee advocacy organization with employee
28 members that has filed with the board the name, address, chief officer, and membership criteria
29 of the organization.

30 (g) "Employer" means a state agency, department, board, commission, college, university,
31 institution, State Board of Education, Department of Education, county board of education,
32 regional educational service agency or multicounty vocational center, or agent thereof, using the
33 services of an employee as defined in this section.

34 (h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential,
35 exceptional, or advantageous treatment of a similarly situated employee unless the treatment is
36 related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

37 (i)(1) "Grievance" means a claim by an employee alleging a violation, a misapplication, or
38 a misinterpretation of the statutes, policies, rules, or written agreements applicable to the
39 employee including:

40 (i) Any violation, misapplication, or misinterpretation regarding compensation, hours,
41 terms and conditions of employment, employment status, or discrimination;

42 (ii) Any discriminatory or otherwise aggrieved application of unwritten policies or practices
43 of his or her employer;

44 (iii) Any specifically identified incident of harassment;

45 (iv) Any specifically identified incident of favoritism; or

46 (v) Any action, policy, or practice constituting a substantial detriment to or interference
47 with the effective job performance of the employee or the health and safety of the employee.

48 (2) "Grievance" does not mean:

49 (A) Any pension matter or other issue relating to public employees' insurance, in
50 accordance with §5-16-1 *et seq.* of this code, retirement, or any other matter in which the authority
51 to act is not vested with the employer;

52 (B) Actions taken by the employer related to declared states of preparedness or states of
53 emergency; or

54 (C) Any matter relating to the protected classes set forth in §5-11-1 *et seq.* of this code.

55 (j) "Grievance proceeding", "proceeding" or the plural means a conference, level one
56 hearing, mediation, private mediation, private arbitration or level three hearing, or any
57 combination, unless the context clearly indicates otherwise.

58 (k) "Grievant" means an employee or group of similarly situated employees filing a
59 grievance.

60 (l) "Harassment" means repeated or continual disturbance, irritation, or annoyance of an
61 employee that is contrary to the behavior expected by law, policy, and profession.

62 (m) "Party" or the plural, means the grievant, intervenor, employer, and the Director of the
63 Division of Personnel or his or her designee, for most state government employee grievances.
64 The Division of Personnel shall not be a party to grievances involving higher education or
65 Department of Transportation employees.

66 (n) "Representative" means any employee organization, fellow employee, attorney, or
67 other person designated by the grievant or intervenor as his or her representative, and may not
68 include a supervisor who evaluates the grievant.

69 (o) "Reprisal" means the retaliation of an employer toward a grievant, witness,
70 representative, or any other participant in the grievance procedure either for an alleged injury itself
71 or any lawful attempt to redress it.

§6C-2-3. Grievance procedure generally.

1 (a) ~~Time limits~~ Filing. —

2 (1) ~~An employee~~ Each grievant shall file a notarized grievance form, signed by the
3 grievant, within the time limits specified in this article. If more than one grievant is a party to the
4 grievance, they may submit one signed and notarized form initiating the grievance. Grievant
5 representatives who file on behalf of one or more grievants shall provide, as part of the grievance
6 form, the name of each grievant being represented and his or her work location. Failure to properly
7 sign and notarize the form will result in immediate dismissal of a grievance, without prejudice. If
8 the initial grievance was timely filed and then dismissed without prejudice, the grievant has five
9 days from receipt of the order of dismissal to refile the grievance. The refiled grievance must meet
10 the requirements of this article and applicable rules of procedure.

11 (2) The specified time limits may be extended to a date certain by mutual written
12 agreement ~~and shall~~ or the grievance evaluator, mediator, or administrative law judge at the
13 request of any party. The specified time limits shall be extended for cause whenever an agency

14 representative, intervenor, or a grievant is not working because of accident, sickness, death in
15 the immediate family, or other cause for which the agency representative or grievant has
16 approved leave from employment.

17 (b) *Default.* —

18 (1) The grievant or the employer prevails by default if a required response is not made by
19 the grievant or the employer representative within the time limits established in this article, unless
20 the employer representative or grievant is prevented from doing so directly as a result of injury,
21 illness, or a justified delay not caused by negligence or intent to delay the grievance process.

22 (2) Within 10 days of the default, the grievant or employer may file with the chief
23 administrator a written notice of intent to proceed directly to the next level or to enforce the default.
24 If the chief administrator objects to the default, then the chief administrator may, within five days
25 of the filing of the notice of intent, request a hearing before an administrative law judge for the
26 purpose of stating a defense to the default, as permitted by subdivision (1) of this subsection, or
27 showing that the remedy requested by the prevailing grievant is contrary to law or contrary to
28 proper and available remedies. ~~In making a determination regarding the remedy, the~~ The
29 administrative law judge shall determine whether the remedy is proper, available, and not contrary
30 to law.

31 (3) If the administrative law judge finds that the grievant or the employer has a defense to
32 the default, as permitted by subdivision (1) of this subsection, or that the remedy is contrary to
33 law or not proper or available at law, the administrative law judge may deny the default or modify
34 the remedy to be granted to comply with the law or otherwise make the grievant or employer
35 whole.

36 (c) *Defenses and limitations.* —

37 (1) ~~Untimeliness.~~ — ~~Any assertion that the filing of the grievance at level one was untimely~~
38 ~~shall be made at or before level two.~~ Timeliness. — A grievance must be filed within the time
39 frames established in §6C-2-4 of this code. If the level one evaluator determines that the

40 grievance was not timely filed, an order dismissing the grievance shall be issued. In no event
41 shall a motion to dismiss be held in abeyance while other proceedings take place. This decision
42 may be appealed to level three, and an administrative law judge shall review the order. If the
43 dismissal is upheld an order shall be issued and the grievance shall be removed from the
44 grievance board's docket. If the dismissal is overturned an order shall be entered stating with
45 particularity the facts and the law found to be in error in the order below. The grievance will be
46 returned to level one for disposition. An administrative law judge will decide an appeal of a
47 dismissal for untimeliness within 30 days. If the grievant proceeds directly to level three, the
48 administrative law judge shall make a determination on timeliness prior to scheduling the level
49 three hearing.

50 (2) Motion to dismiss. — Any party may, at any time, file a motion to dismiss asserting that
51 the board lacks jurisdiction under §6C-2-2(i) of this code, that the grievant has otherwise failed to
52 state a claim under this article upon which relief may be granted, or that the grievance was not
53 timely filed. Upon filing of such a motion, the chief administrator or administrative law judge shall
54 immediately hold in abeyance all other proceedings, and within 10 days of receipt of filing, issue
55 a ruling on the motion or schedule the motion for a hearing.

56 ~~(2)~~ (3) *Back pay.* — When it is a proper remedy, back pay may only be granted for one
57 year prior to the filing of a grievance, unless the grievant shows, by a preponderance of the
58 evidence, that the employer acted in bad faith in concealing the facts giving rise to the claim for
59 back pay, in which case an 18-month limitation on back pay applies.

60 ~~(3)~~ (4) *Statutory defense.* — If a party intends to assert the application of any statute,
61 policy, rule, or written agreement as a defense at any level, then a copy of the materials shall be
62 forwarded to all parties.

63 (d) *Withdrawal and reinstatement of grievance.* — An employee may withdraw a grievance
64 at any time by filing a written notice of withdrawal with the chief administrator or the administrative
65 law judge. The grievance may not be reinstated by the grievant unless reinstatement is granted

66 by the chief administrator or the administrative law judge. If more than one employee is named
67 as a grievant, the withdrawal of one employee does not prejudice the rights of any other employee
68 named in the grievance.

69 (e) *Consolidation and groups of similarly situated employees.* —

70 (1) Grievances may be consolidated at any level by agreement of all parties or at the
71 discretion of the chief administrator or administrative law judge: Provided, That a grievance that
72 has been dismissed under the provisions of subdivisions (1) or (2) of this subsection may not be
73 revived or consolidated with another grievance.

74 (2) Class actions are not permitted. However, a grievance may be filed by one or more
75 employees on behalf of a group of similarly situated employees. Any similarly situated employee
76 shall complete a grievance form stating his or her intent to join the group of similarly situated
77 employees. Only one employee filing a grievance on behalf of similarly situated employees shall
78 be required to participate in the conference or level one hearing.

79 (f) *Intervention.* — Upon a timely request, any employee may intervene and become a
80 party to a grievance at any level when the employee demonstrates that the disposition of the
81 action may substantially and adversely affect his or her rights or property and that his or her
82 interest is not adequately represented by the existing parties.

83 (g) *Representation and disciplinary action.* —

84 (1) An employee may designate a and shall provide the name and contact information for
85 the individual or organization of the representative who may be present at any step of the
86 procedure, as well as at any meeting that is held with the employee for the purpose of discussing
87 or considering disciplinary action.

88 (2) An employee may not be compelled to testify against himself or herself in a disciplinary
89 grievance hearing.

90 (h) *Reprisal.* — No reprisal or retaliation of any kind may be taken by an employer against
91 a grievant or any other participant in a grievance proceeding by reason of his or her participation.

92 Reprisal or retaliation constitutes a grievance and any person held responsible is subject to
93 disciplinary action for insubordination.

94 (i) *Improper classification.* — A supervisor or administrator responsible for a willful act of
95 bad faith toward an employee or who intentionally works an employee out of classification may
96 be subject to disciplinary action, including demotion or discharge.

97 (j) *Forms.* — The board shall create the forms for filing grievances, giving notice, taking
98 appeals, making reports and recommendations, and all other necessary documents and provide
99 them on the Grievance Board's website to be downloaded for completion and submission and for
100 ~~to~~ chief administrators to make available to any employee upon request.

101 (k) *Discovery.* — The parties are entitled to copies of all material submitted to the chief
102 administrator or the administrative law judge by any party.

103 (l) *Notice.* — Reasonable notice of a proceeding shall be sent at least five days prior to
104 the proceeding to all parties and their representatives and shall include the date, time, and place
105 of the proceeding. If an employer causes a proceeding to be postponed without adequate notice
106 to employees who are scheduled to appear during their normal workday, the employees may not
107 suffer any loss in pay for work time lost.

108 (m) *Record.* — Conferences ~~are not required to~~ may be recorded at the discretion of the
109 chief administrator for the sole use of aiding in issuing a decision or report. The recording shall
110 not be transcribed, nor will the recording be shared with the parties, or made part of the record.
111 The recording shall be destroyed promptly after the decision has been issued. but all All
112 documents admitted, and the decision, agreement, or report become part of the record. All the
113 testimony at a level one and level three hearing shall be recorded by mechanical means and a
114 copy of the recording or transcript will be provided to any party upon request. The board is
115 responsible for paying for and promptly providing a certified transcript of a level three hearing to
116 the court for a mandamus or appellate proceeding.

117 (n) *Grievance decisions and reports.* —

118 (1) Any party may propose findings of fact and conclusions of law within 20 days of an
119 arbitration or a level three hearing.

120 (2) A decision, agreement, or report shall be dated, in writing, setting forth the reasons for
121 the decision or outcome, and transmitted to the parties and, in a private arbitration, to the board,
122 within the time limits prescribed. If the grievance is not resolved, the written decision or report
123 shall include the address and procedure to appeal to the next level.

124 (o) *Scheduling.* — All proceedings shall be scheduled during regular work hours in a
125 convenient location accessible to all parties in accommodation to the parties' normal operations
126 and work schedules. By agreement of the parties, a proceeding may be scheduled at any time or
127 any place. Disagreements shall be decided by the chief administrator or administrative law judge
128 presiding in the case.

129 (p) *Attendance and preparation.* —

130 (1) The grievant, witnesses, and an employee representative shall be granted reasonable
131 and necessary time off during working hours to attend grievance proceedings without loss of pay
132 and without charge to annual or compensatory leave credits. A grievant or an intervenor may not
133 be on any type of leave time or worker compensation at the time of the conference, mediation,
134 hearing, or other proceeding. The proceedings shall be held in abeyance until the grievant returns
135 to work: *Provided, That, where the grievant has been determined to be unable to return to work,*
136 and the grievant's inability to return to work does not render the grievance moot, the grievance
137 proceedings shall be resumed and the grievance resolved upon its merits.

138 (2) In addition to actual time spent attending grievance proceedings, the grievant and an
139 employee representative shall be granted time off during working hours, not to exceed four hours
140 per grievance, for the preparation of the grievance without loss of pay and without charge to
141 annual or compensatory leave credits. However, the first responsibility of any employee is the
142 work assigned to the employee. An employee may not allow grievance preparation and
143 representation activities to seriously affect the overall productivity of the employee as determined

144 by the employer. An employee may be the representative in no more than five grievances per
145 year. Time spent in preparing for and attending grievance proceeding will be accounted for on
146 leave request forms by stating the amount of time expended in such activities. Each employee
147 representative shall request annual leave for any time in excess of four hours per grievance spent
148 in grievance preparation.

149 (3) The grievant and an employee representative shall have access to the employer's
150 equipment for purposes of preparing grievance documents subject to the reasonable rules of the
151 employer governing the use of the equipment for nonwork purposes.

152 (4) Disagreements regarding preparation time shall be decided by the chief administrator
153 or administrative law judge presiding in the case.

154 (q) *Grievance files.* —

155 (1) All grievance forms decisions, agreements, and reports shall be kept in a file separate
156 from the personnel file of the employee and may not become a part of the personnel file, but shall
157 remain confidential except by mutual written agreement of the parties.

158 (2) The grievant may file a written request to have ~~the grievant's~~ his or her identity removed
159 from any files kept by the employer one year following the conclusion of the grievance.

160 (r) *Number of grievances.* — The number of grievances filed against an employer by an
161 employee is not, per se, an indication of the employer's or the employee's job performance.

162 (s) *Procedures and rules.* — The board shall prescribe rules and procedures in compliance
163 with this article, article three of this chapter and the state Administrative Procedures Act under
164 chapter 29A of this code for all proceedings relating to the level three grievance procedure. Chief
165 administrators may adopt procedural rules to govern level one proceedings. Chief administrators
166 and administrative law judges are governed by the West Virginia Ethics Commission's legislative
167 Code of Conduct for Administrative Law Judges, rule 158 CSR 13.

§6C-2-4. Grievance procedural levels.

1 (a) *Level one: Chief administrator.* —

2 (1) Within 15 days following the occurrence of the event upon which the grievance is
3 based, within 15 days of the date upon which the event became known to the employee, or within
4 15 days of the most recent occurrence of a continuing practice giving rise to a grievance, an
5 employee may file a written grievance with the chief administrator stating the nature of the
6 grievance and the relief requested and request either a conference or a hearing. The employee
7 shall also file a copy of the grievance with the board. State government employees using the
8 services of the Division of Personnel shall further file a copy of the grievance with the Director of
9 the Division of Personnel. Employees of the Department of Transportation shall file a copy of the
10 grievance with the chief administrator or designated grievance evaluator.

11 (2) *Conference.* — The chief administrator shall hold a conference within ~~ten~~ 20 days of
12 receiving the grievance. A conference is a private, informal meeting between the grievant and the
13 chief administrator to discuss the issues raised by the grievance, exchange information, and
14 attempt to resolve the grievance. The chief administrator may permit other employees and
15 witnesses to attend and participate in a conference to reach a resolution. The chief administrator
16 shall issue a written decision within ~~fifteen~~ 20 days of the conference.

17 (3) *Level one hearing.* — The chief administrator shall hold a level one hearing within
18 ~~fifteen~~ 20 days of receiving the grievance. A level one hearing is a recorded proceeding conducted
19 in private in which the grievant is entitled to be heard and to present evidence; the formal rules of
20 evidence and procedure do not apply, but the parties are bound by the rules of privilege
21 recognized by law. The parties may present and cross-examine witnesses and produce
22 documents, but the number of witnesses, motions and other procedural matters may be limited
23 by the chief administrator. The chief administrator shall issue a written decision within ~~fifteen~~ 20
24 days of the level one hearing.

25 (4) An employee may proceed directly to level three upon the agreement of the parties or
26 when the grievant has been discharged, suspended without pay, ~~or~~ demoted or reclassified

27 resulting in a loss of compensation or benefits. Level one and level two proceedings are waived
28 in these matters.

29 (b) *Level two: Alternative dispute resolution.* —

30 (1) Within ~~ten~~ 15 days of receiving an adverse written decision at level one, the grievant
31 shall file a written request for mediation, private mediation, or private arbitration.

32 (2) *Mediation.* — The board shall schedule the mediation between the parties within 20
33 days of the request. Mediation shall be conducted by an administrative law judge pursuant to
34 standard mediation practices and board procedures at no cost to the parties. Parties may be
35 represented, and the representative shall have the authority to resolve the dispute. The report of
36 the mediation shall be documented in writing within ~~45~~ 20 days. Agreements are binding and
37 enforceable in this state by a writ of mandamus.

38 (3) *Private mediation.* — The parties may agree in writing to retain their choice of a private
39 mediator and share the cost. The mediator shall schedule the mediation within ~~twenty~~ 20 days of
40 the written request and shall follow standard mediation practices and any applicable board
41 procedures. Parties may be represented and shall have the authority to resolve the dispute. The
42 report of the mediation shall be documented in writing within ~~45~~ 20 days. Agreements are binding
43 and enforceable in this state by a writ of mandamus.

44 (4) *Private arbitration.* — The parties may agree, in writing, to retain their choice of a
45 private arbitrator and share the cost. The arbitrator shall schedule the arbitration within 20 days
46 of the written request and shall follow standard arbitration practices and any applicable board
47 procedures. The arbitrator shall render a decision in writing to all parties, setting forth findings of
48 fact and conclusions of law on the issues submitted within 30 days following the arbitration. An
49 arbitration decision is binding and enforceable in this state by a writ of mandamus. The arbitrator
50 shall inform the board, in writing, of the decision within ~~40~~ 15 days.

51 (c) *Level three hearing.* —

52 (1) Within 10 days of receiving a written report stating that level two was unsuccessful, the
53 grievant may file a written appeal with the employer and the board requesting a level three hearing
54 on the grievance. State government employees who use the services of the Division of Personnel
55 shall further file a copy of the grievance with the Director of the Division of Personnel. Employees
56 of the Department of Transportation shall file a copy of the grievance with the chief administrator
57 or designated grievance evaluator.

58 (2) The administrative law judge shall conduct all proceedings in an impartial manner and
59 shall ensure that all parties are accorded procedural and substantive due process.

60 (3) The administrative law judge shall schedule the level three hearing and any other
61 proceedings or deadlines within ~~a reasonable time~~ 30 days of receipt of the appeal from a lower-
62 level decision in consultation with the parties. The location of the hearing and whether the hearing
63 is to be made public are at the discretion of the administrative law judge. Hearings may be
64 rescheduled at the request of either party for good cause shown or by the administrative law
65 judge.

66 (4) The administrative law judge may issue subpoenas for witnesses, limit witnesses,
67 administer oaths, and exercise other powers granted by rule or law.

68 (5) Within 30 days following the hearing or the receipt of the proposed findings of fact and
69 conclusions of law, the administrative law judge shall render a decision in writing to all parties
70 setting forth findings of fact and conclusions of law on the issues submitted.

71 (6) The administrative law judge may make a determination of bad faith and, in extreme
72 instances, allocate the cost of the hearing to the party found to be acting in bad faith. The
73 allocation of costs shall be based on the relative ability of the party to pay the costs.

§6C-2-6. Allocation of expenses and attorney's fees.

1 (a) Any expenses incurred relative to the grievance procedure at levels one, two, or three
2 shall be borne by the party incurring the expenses.

3 (b) In the event a grievant or employer appeals an adverse level three decision to the
4 ~~circuit court of Kanawha County~~ Intermediate Court of Appeals, or an adverse ~~circuit court~~
5 Intermediate Court of Appeals decision to the Supreme Court of Appeals of West Virginia, and
6 the grievant appellant substantially prevails upon the appeal, the grievant appellant may recover
7 ~~from the employer~~ court costs and reasonable attorney's fees for the appeal to be set by the court.